No. 223.

Brf. of Perkins for Appellee.

NOV 26 1900
JAMES H. McKENNEY,
Clerk.

Filed Nov. 26, 1900.

IN THE

Supreme Court of the United States.

October Term, 1900.

No. 223.

A. L. GUSMAN, APPEARING IN BEHALF OF SAM WRIGHT, APPELLANT,

versus

L. H. MARRERO, SHERIFF OF THE PARISH OF JEFFERSON, STATE OF LOUISIANA, APPELLEE.

Statement of Case and Brief in Behalf of Defendant, Appellee.

ROBERT J. PERKINS,
Of Counsel for Appellee.

PALFREY-DAMERON CO., LTD. N. O.

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Statement of Case and Brief in Behalf of Defendant, Appellee.

STATEMENT OF THE CASE.

This appeal is taken from a judgment of the Circuit Court of the United States for the Eastern District of Louisiana, adverse to the plaintiff, appellant herein, wherein he prayed as follows: "Wherefore, the above duly considered, petitioner prays for citation and service of petition upon the

aforesaid L. H. Marrero, Sheriff of the Parish of Jefferson, State of Louisiana, commanding him to show cause, if any he has, why the said Sam Wright, now in his illegal custody, should not be by him set at liberty.

"Petitioner further prays that after all necessary services, legal delays and due trial, there be judgment by this Honorable Court, *mandamusing and ordering* the said L. H. Marrero, Sheriff of the Parish of Jefferson, to restore Sam Wright to that liberty he has been wrongfully depriving him of.

"Finally petitioner prays for such general and specific relief for said Wright as the law and evidence on trial, may, on trial, show him entitled to receive.

"Respectfully submitted,

"A. L. GUSMAN."

Here the prayer ends, with no order from the Court *a qua*, and no application for an order.

Defendant, appellee herein, filed exceptions to the jurisdiction of the Court *ratione materiae et ratione personae*, and of no cause of action, which were maintained by the lower court.

Wright was indicted by the grand jury of the Parish of Jefferson, State of Louisiana, on December 6th, 1899, for the crime of "breaking and enter-

ing a dwelling-house in the night-time, armed with a dangerous weapon, and making an assault upon a woman therein residing, with intent to commit rape," which is made a crime by Sec. 850 of the Revised Statues of Louisiana, and the punishment is death.

The crime was charged to have been committed on November 16th, 1899.

He was tried and convicted by a properly qualified jury of twelve on December 11th, 1899.

He was defended by counsel, who were present throughout the trial, and, after conviction, made a lengthy application for a new trial.

That application was denied, and Wright was sentenced to be hanged.

No appeal was taken to the Supreme Court of Louisiana.

The Governor of Louisiana, after a certified copy of the proceedings had been sent him as the laws of that State direct, fixed and appointed Friday, February 9th, 1900, the day for the execution.

Wright, through Gusman, sought relief through the United States Court, and the execution was stayed awaiting a decision of this Honorable Court.

ARGUMENT.

It is submitted that the decision of the lower court, maintaining the exceptions filed by defendant, should be affirmed for the following reasons:

I. This Honorable Court is without jurisdiction to hear and determine this appeal for this:

(*a*) That there is no appeal allowed by law to this Court from the judgment appealed from, and

(*b*) That appellant has no interest in this cause and cannot stand in judgment herein.

II. This is not an application for a writ of *habeus corpus* nor for a writ of mandamus, but an ordinary action in which appellant has no earthly interest or concern.

III. This appeal is wholly without merit, is frivolous, and is taken for purposes of delay only, and was intended to and does interfere with, hinder and delay the execution of the criminal laws of the State of Louisiana, by its duly qualified officers.

IV. No writ of error to this Court has been applied for nor granted by the lower court.

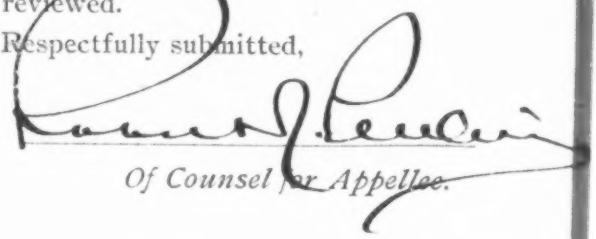
V. Appellant's sole claim to jurisdiction in the Federal Courts, showing an absence of due process of law, is the alleged fact that Sam Wright was indicted by a grand jury of twelve (12) instead of sixteen (16).

The Constitution of Louisiana of 1879 required a grand jury of sixteen; the Constitution of 1898 which became operative in July of that year (over a year before the crime with which Wright was charged was committed), reduced the number of grand jury through the State to twelve.

On the face of the papers the appellant is not entitled to relief prayed for.

This is not an application for a writ of *habeus corpus*, which is the only method under which the case could be reviewed.

Respectfully submitted,



Of Counsel for Appellee.